On April 3, 2020, Governor Roy Cooper issued an “Additional Guidance on Essential Governmental Operations” document that restates key provisions from Executive Orders No. 120 and No. 121 on the operation of State and local government offices that are deemed essential governmental operations.

For your convenience, a copy of the “Additional Guidance” document is attached, in addition to Executive Orders No. 120 (issued March 23, 2020) and No. 121 (issued March 27, 2020).

Pursuant to Section 2 of Executive Order No. 120, local governmental agencies, such as sheriffs’ offices, are directed to continue to exercise their responsibilities to the extent that their functions are required under State and federal law. This includes the mandatory duties of a sheriff regarding issuance of gun permits, as explained in our memo to you on this topic on March 27, 2020 (copy attached.)

Pursuant to Executive Order No. 121, “essential governmental operations” means all services provided by State or local government agencies (i.e. sheriff’s office) that are needed to ensure the continuing operation of State or local government or to provide for or support the health, safety and welfare of the public.

In addition, Executive Order No. 121 authorizes citizens to “leave their residence” to travel to State or local “Essential Governmental Operations” (i.e. sheriff’s office).

Therefore, under the Governor’s Executive Orders citizens may continue to travel to the sheriff’s office to apply for a pistol purchase permit or a new concealed handgun permit (including to be fingerprinted), or to renew a concealed handgun permit.
Further, the Governor’s “Additional Guidance on Essential Governmental Operations” document (see attached) says that job applicants who are required by law to get a criminal history records check are allowed to leave their residence to go get fingerprinted and to apply for the criminal history records check. However, as noted in our memo to you on this topic dated March 20, 2020 (see attached), “a sheriff may use discretion regarding the decision to offer or suspend fingerprinting service for the general public.”

Answering this question has been especially challenging. Special thanks to Norma Houston, Lecturer in Public Law and Government at the UNC-Chapel Hill School of Government. Norma’s expert knowledge of our State’s Emergency Management Act (G.S. Chapter 166A) and her help in piecing together that law with various provisions of the Governor’s Executive Orders was critical to our ability to provide the information above.

If you have any questions or need any additional information, please contact Matthew Boyatt, NCSA Deputy General Counsel, at mboyatt@ncsheriffs.net or at (919) 459-6467.

Thanks….Eddie C.

Edmond W. (Eddie) Caldwell, Jr.
Executive Vice President and General Counsel
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North Carolina Sheriffs’ Association
Proudly Serving the Sheriffs and Citizens of North Carolina since 1922
Does the Governor’s Executive Order No. 121 allow government offices to continue to conduct business?

Yes, essential government operations are continuing.

Section 2, paragraph C 6 of Executive Order No. 121 includes the following as COVID-19 Essential Business and Operation:

**Essential Governmental Operations.** Essential Governmental Operations means all services provided by the State or any municipality, township, county, political subdivision, board, commission or agency of government and needed to ensure the continuing operation of the government agencies or to provide for or support the health, safety and welfare of the public, and including contractors performing Essential Governmental Operations. Each government body shall determine its Essential Governmental Operations and identify employees and/or contractors necessary to the performance of those functions.

In addition, Section 2 of Executive Order No. 120 provides:

Section 2. Mandatory Local Government Operations

a. Consistent with my authority under N.C. Gen. Stat. §§ 166A-19.30(c)(1) and (2), and to the extent that local government functions are required under state and federal law, I hereby direct the appropriate local governmental agencies to continue to exercise their responsibilities, including but not limited to local county Department of Social Services (“DSS”) offices, Registers of Deeds, and other local government functions that are required to protect lives and property.

b. Notwithstanding Section (a) of this Section, local government employees must take appropriate precautions to maintain the health of the general public and their employees who are required to perform their official duties in a manner that brings them in contact with the general public by putting in place appropriate public health measures in government facilities, such as social distancing, use of reasonable personal protective equipment and offering reasonable accommodations to service providers with consideration for their health.
Does the Governor's Executive Order No. 121 allow for travel to government offices to conduct business with the government?

Yes, travel is permissible to obtain essential government services. Each government body will determine what essential governmental operations are.

Section 1, paragraph 3 vii of Executive Order No. 121 provides:

**Leaving the home and travel for Essential Activities is permitted.** For purposes of this Executive Order, individuals may leave their residence only to perform any of the following Essential Activities:

   vii.  **To receive goods and services.** To receive goods and services provided by a COVID-19 Essential Business or Operation.

I have applied for a job and need to get a criminal history check. Can I go to my local law enforcement agency to get fingerprinted?

Yes—if you have applied for a job an Executive Order and/or CISA has determined is a part of the Essential Critical Infrastructure workforce. Criminal history record checks are required by state and federal law for certain applicants for employment. These jobs include, but are not limited to, health care, law enforcement, child care, licensed facility-based care, and public safety employees.

Section 2, paragraph C 2 of Executive Order No. 121 includes the following as COVID-19 Essential Business and Operation:


CISA Guidance for Other Community- Or Government-Based Operations and Essential Functions includes workers who support necessary credentialing, vetting and licensing operations for critical infrastructure workers which includes law enforcement and corrections. [https://www.cisa.gov/sites/default/files/publications/CISA_Guidance_on_the_Essential_Critical_Infrastructure_Workforce_Version_2.0_Updated](https://www.cisa.gov/sites/default/files/publications/CISA_Guidance_on_the_Essential_Critical_Infrastructure_Workforce_Version_2.0_Updated)
State of North Carolina
ROY COOPER
GOVERNOR

March 23, 2020

EXECUTIVE ORDER NO. 120

ADDITIONAL LIMITATIONS ON MASS GATHERINGS, RESTRICTIONS ON VENUES AND LONG TERM CARE FACILITIES, AND EXTENSION OF SCHOOL CLOSURE DATE

WHEREAS, the undersigned issued Executive Order No. 116 on March 10, 2020, which declared a State of Emergency to coordinate the State’s response and protective actions to address the Coronavirus Disease 2019 (COVID-19) public health emergency and to provide for the health, safety, and welfare of residents and visitors located in North Carolina (“Declaration of a State of Emergency”); and

WHEREAS, the World Health Organization declared COVID-19 a global pandemic on March 11, 2020; and

WHEREAS, on March 13, 2020, the President of the United States declared the ongoing COVID-19 outbreak a pandemic of sufficient severity and magnitude to warrant an emergency declaration for all states, tribes, territories, and the District of Columbia pursuant to section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121-5207 (the “Stafford Act”); and

WHEREAS, on March 13, 2020, the President of the United States pursuant to Sections 201 and 301 of the National Emergencies Act, 50 U.S.C. § 1601, et seq. and consistent with Section 1135 of the Social Security Act, as amended (42 U.S.C. § 1320b-5), declared that the COVID-19 pandemic in the United States constitutes a national emergency beginning March 1, 2020; and

WHEREAS, on March 14, 2020, the undersigned issued Executive Order No. 117, which prohibited mass gatherings to no more than one hundred (100) people in the State of North Carolina and closed K-12 public schools to limit the spread of COVID-19; and

WHEREAS, on March 17, 2020, the undersigned issued Executive Order No. 118, which limited operations of restaurants and bars and broadened unemployment insurance benefits in response to COVID-19; and

WHEREAS, on March 20, 2020, the undersigned issued Executive Order No. 119, which provides provisions to improve access to childcare and helps facilitate critical motor vehicle operations; and

WHEREAS, the North Carolina Department of Health and Human Services (“NCDHHS”) confirmed the number of cases of COVID-19 in North Carolina continues to rise and has lab documentation of community spread; and

...
WHEREAS, on March 13, 2020, NCDHHS issued a document entitled "Recommendations on Visitation in Long Term Care Facilities to Reduce Risk of Transmission of COVID-19" urging limitations on visitors at long term care facilities in the state to help limit the spread of COVID-19 among at-risk populations; and

WHEREAS, NCDHHS has now recommended that increased measures are required to control the spread of COVID-19 in long term care settings; and

WHEREAS, needed control cannot be imposed locally because local authorities in some jurisdictions have not enacted appropriate ordinances or issued appropriate declarations as authorized by N.C. Gen. Stat. § 166A-19.31; and

WHEREAS, the area in which the emergency exists has spread across local jurisdictional boundaries, and the legal control measures of the jurisdictions are conflicting or uncoordinated to the extent that efforts to protect life and property are, or unquestionably will be, severely hampered; and

WHEREAS, the area subject to the COVID-19 emergency is statewide, covering the jurisdictions of multiple city, county and tribal governments, thus making legal control measures difficult to coordinate and severely hampering efforts to protect life and property; and

WHEREAS, the undersigned has determined that local control measures for the emergency, taken alone, are insufficient to assure adequate protection for lives and property because the scale of the COVID-19 emergency is so great that it exceeds the capability of local government officials to cope with it; and

WHEREAS, the undersigned has determined that the measures identified below are necessary for the purpose of taking care that North Carolinians health, safety, and welfare are protected in accordance with the laws of the state; and

WHEREAS, further action is necessary to protect the health and safety of the residents of North Carolina, slow the spread of the COVID-19 pandemic, reduce the number of people infected, avoid strain on our healthcare system, and to address adverse economic impacts that will lead to additional human suffering upon individuals adversely impacted by the COVID-19 pandemic; and

WHEREAS, Executive Order No. 116 invoked the Emergency Management Act, and authorizes the Governor to exercise the powers and duties set forth therein to direct and aid in the response to, recovery from, and mitigation against emergencies; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(a)(1), the undersigned may utilize all available state resources as reasonably necessary to cope with an emergency, including the transfer and direction of personnel or functions of state agencies or units thereof for the purpose of performing or facilitating emergency services; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(c) during a gubernatorially declared state of emergency, the undersigned determined that local control of the emergency is insufficient to assure adequate protection for lives and property because the area in which the emergency exists has spread across local jurisdictional boundaries; and the legal control measures are conflicting or uncoordinated to the extent that efforts to protect life and property are, or unquestionably will be, severely hampered; and

WHEREAS, based upon the findings above, N.C. Gen. Stat. §§ 166A-19.31(b)(1), (b)(2), and (b)(5) authorizes the Governor to prohibit or restrict the operation of business establishments, the congregation of people as well as the movement of people in public places and take other activities or conditions the control of which may be reasonably necessary to maintain order and protect lives or property during the state of emergency

NOW, THEREFORE, by the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, IT IS ORDERED:
Section 1. Mass Gathering

For the reasons and pursuant to the authority set forth above:

a. Executive Order No. 117 § 1 is amended as follows:

1. A mass gathering is defined as any event or convening that brings together more than fifty (50) persons in a single room or single space at the same time, such as an auditorium, stadium, arena, large conference room, meeting hall, or any other confined indoor or outdoor space. This includes parades, fairs and festivals.

2. A mass gathering does not include normal operations at airports, bus and train stations, medical facilities, shopping malls and centers. It also does not include office environments, factories, grocery stores, and child care facilities.

3. Pursuant to N.C. Gen. Stat. §§ 166A-19.30(a)(2) and 19.30(c), the provision of this section shall be enforced by state and local law enforcement officers.

b. In addition to the restrictions on mass gatherings identified in Executive Order No. 117 § 1, entertainment facilities without a retail or dining component are ordered to close at 5:00 pm on Wednesday, March 25, 2020, though any retail or dining component may operate within that establishment solely for that purpose. Any dining facilities may operate only within the restrictions for restaurants as set out in Executive Order No. 118. These facilities include, but are not limited to, the following types of business:

- Bingo Parlors, including Bingo sites operated by charitable organizations
- Bowling Alleys
- Indoor Exercise Facilities (e.g. gyms, yoga studios, martial arts facilities, indoor trampoline and rock climbing facilities)
- Health Clubs
- Indoor/Outdoor Pools
- Live Performance Venues
- Movie Theaters
- Skating Rinks
- Spas
- Gaming and business establishments which allow gaming activities (e.g. video poker, gaming, sweepstakes, video games, arcade games, pinball machines or other computer, electronic or mechanical devices played for amusement)

c. In addition, because the ability to practice the social distancing necessary to reasonably protect against COVID-19 is significantly reduced in certain establishments where individuals are in close proximity for extended periods of time, or service personnel are in direct contact with clients, personal care and grooming businesses, including but not limited to the following, are also ordered to close:

- Barber Shops
- Beauty Salons (including waxing and hair removal centers)
- Hair Salons
- Nail Salons/Manicure/Pedicure Providers
- Massage Parlors
- Tattoo Parlors

d. Violations of this section or orders issued pursuant to N.C. Gen. Stat. § 166A-19.30 may be subject to prosecution pursuant to N.C. Gen. Stat. § 166A-19.30(d) and are punishable as a Class 2 misdemeanor in accordance with N.C. Gen. Stat. § 14-288.20A.

Section 2. Mandatory Local Government Operations

a. Consistent with my authority under N.C. Gen. Stat. §§ 166A-19.30(c)(1) and (c)(2), and to the extent that local government functions are required under state and federal law, I hereby direct the appropriate local government agencies and officials to continue to exercise their responsibilities, including but not limited to local county Department of Social Services
of Social Services ("DSS") offices, Health Departments, Registers of Deeds, and other local government functions that are required to protect lives and property.

b. Notwithstanding Section (a) of this Section, local government must take appropriate precautions to maintain the health of the general public and their employees who are required to perform their official duties in a manner that brings them in contact with the general public by putting in place appropriate public health measures, such as social distancing, use of reasonable personal protective equipment, and offering reasonable accommodations to employees who provide services to the public with consideration for their health.

Section 3. Long Term Care Visitation Limitations

a. Long term care facilities shall restrict visitation of all visitors and non-essential health care personnel, except for certain compassionate care situations, for example, an end-of-life situation.

b. This restriction does not include essential health care personnel.

c. For purposes of this Executive Order only, long term care facilities include all of the following:

i. Skilled nursing facilities;
ii. Adult care homes;
iii. Family care homes;
iv. Mental health group homes; and
v. Intermediate care facilities for individuals with intellectual disabilities.

Section 4. Continued School Closure

For the reasons and pursuant to the authority set forth above:

Executive Order No. 117 § 2 is amended as follows:

I hereby direct that all public schools close for students effective Monday, March 16, 2020, as set forth in Executive Order No. 117, through Friday, May 15, 2020, unless extended beyond that date.

Section 5. Effective Date

This Executive Order is effective at 5:00 pm Wednesday, March 25, 2020, and shall remain in effect for thirty (30) days unless rescinded or superseded by another applicable Executive Order. Section 4 of this Executive Order is effective Monday, March 16, 2020, as set forth in Executive Order No. 117, through Friday, May 15, 2020. An Executive Order rescinding the Declaration of a State of Emergency will automatically rescind this Executive Order.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 23rd day of March in the year of our Lord two thousand and twenty.

Roy Cooper
Governor

ATTEST:

Elaine F. Marshall
Secretary of State
WHEREAS, on March 10, 2020, the undersigned issued Executive Order No. 116 which declared a State of Emergency to coordinate the State’s response and protective actions to address the Coronavirus Disease 2019 (COVID-19) public health emergency and to provide for the health, safety, and welfare of residents and visitors located in North Carolina (“Declaration of a State of Emergency”); and

WHEREAS, on March 11, 2020, the World Health Organization declared COVID-19 a global pandemic; and

WHEREAS, on March 13, 2020, the President of the United States declared the ongoing COVID-19 outbreak a pandemic of sufficient severity and magnitude to warrant an emergency declaration for all states, tribes, territories, and the District of Columbia pursuant to Section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5207 (the “Stafford Act”); and

WHEREAS, on March 13, 2020, the President of the United States pursuant to Sections 201 and 301 of the National Emergencies Act, 50 U.S.C. § 1601, et seq. and consistent with Section 1135 of the Social Security Act, as amended (42 U.S.C. § 1320b-5), declared that the COVID-19 pandemic in the United States constitutes a national emergency, retroactive to March 1, 2020; and

WHEREAS, the undersigned has issued Executive Order Nos. 117 – 120 for the purposes of protecting the health, safety and welfare of the people of North Carolina; and

WHEREAS, on March 25, 2020, the President of the United States, pursuant to Section 401 of the Stafford Act, approved a Major Disaster Declaration, FEMA-4487-DR, for the State of North Carolina; and

WHEREAS, on March 27, 2020, the North Carolina Department of Health and Human Services (“NCDHHS”) has documented 763 cases of COVID-19 across 60 counties, and has identified the occurrence of widespread community transmission of the virus; and

WHEREAS, hospital administrators and health care providers have expressed concerns that unless the spread of COVID-19 is limited, existing health care facilities may be insufficient to care for those who become sick; and
WHEREAS, to mitigate community spread of COVID-19 and to reduce the burden on the state’s health care providers and facilities, it is necessary to limit unnecessary person-to-person contact in workplaces and communities; and

WHEREAS, such limitations on person-to-person contact are reasonably necessary to address the public health risk posed by COVID-19; and

WHEREAS, some areas of the state have seen more rapid and significant spread of COVID-19 than others, and some but not all local authorities have taken steps to address community spread of the illness in their communities; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(c)(i), the undersigned has determined that local control of the emergency is insufficient to assure adequate protection for lives and property of North Carolinians because needed control cannot be imposed locally because not all local authorities have enacted such appropriate ordinances or issued such appropriate declarations restricting the operation of businesses and limiting person-to-person contact in workplaces and communities; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(c)(ii), the undersigned has determined that local control of the emergency is insufficient to assure adequate protection for lives and property of North Carolinians because some but not all local authorities have taken implementing steps under such ordinances or declarations, if issued, in order to effectuate control over the emergency that has arisen; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(c)(iii), the undersigned has determined that local control of the emergency is insufficient to assure adequate protection for lives and property of North Carolinians because the area in which the emergency exists spreads across local jurisdictional boundaries and the legal control measures of the jurisdictions are conflicting or uncoordinated to the extent that efforts to protect life and property are, or unquestionably will be, severely hampered; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(c)(iv), the undersigned has determined that local control of the emergency is insufficient to assure adequate protection of lives and property of North Carolinians because the scale of the emergency is so great that it exceeds the capability of local authorities to cope with it; and

WHEREAS, Executive Order No. 116 invoked the Emergency Management Act, and authorizes the undersigned to exercise the powers and duties set forth therein to direct and aid in the response to, recovery from, and mitigation against emergencies; and

WHEREAS, N.C. Gen. Stat. § 166A-19.10(b)(3) authorizes and empowers the undersigned to delegate any Gubernatorial vested authority under the Emergency Management Act and to provide for the subdelegation of any authority; and

WHEREAS, N.C. Gen. Stat. § 166A-19.30(c) in conjunction with N.C. Gen. Stat. § 166A-19.31(b)(1) authorizes the undersigned to prohibit and restrict the movement of people in public places, including by: (a) imposing a curfew; (b) directing and compelling the voluntary or mandatory evacuation of people from an area; (c) prescribing routes, modes of transportation and destinations in connection with evacuation; (d) controlling the movement of persons within an emergency area; and (e) closing streets, roads, highways, and other areas ordinarily used for vehicular travel, except to the movement of persons necessary for recovery from the emergency; and

WHEREAS, N.C. Gen. Stat. § 166A-19.30(c) in conjunction with N.C. Gen. Stat. § 166A-19.31(b)(2) authorizes the undersigned to prohibit and restrict the operation of offices, business establishments and other places to and from which people may travel or at which they may congregate; and

WHEREAS, N.C. Gen. Stat. § 166A-19.30(c) in conjunction with N.C. Gen. Stat. § 166A-19.31(b)(5) authorizes the undersigned to prohibit and restrict activities which may be reasonably necessary to maintain order and protect lives and property during a state of emergency; and
WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(a)(2), during a Gubernatorially declared State of Emergency, the undersigned has the power to “give such directions to state and local law enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of this Article”.

NOW, THEREFORE, by the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, IT IS ORDERED:

Section 1. Stay at Home

1. **Stay at home or place of residence.** All individuals currently in the State of North Carolina are ordered to stay at home, their place of residence, or current place of abode, (hereinafter “residence”) except as allowed in this Executive Order. To the extent individuals are using shared or outdoor spaces when outside their residence, they must at all times and as much as reasonably possible, maintain social distancing of at least six (6) feet from any other person, with the exception of family or household members, consistent with the Social Distancing Requirements set forth in this Executive Order. All persons may leave their homes or place of residence only for Essential Activities, Essential Governmental Operations, or to participate in or access COVID-19 Essential Businesses and Operations, all as defined below.

Individuals experiencing homelessness are exempt from this Executive Order, but are strongly urged to obtain shelter that meets Social Distancing Requirements. Individuals whose residences are unsafe or become unsafe, such as victims of domestic violence, are permitted and urged to leave their home and stay at a safe alternative location.

2. **Prohibited and permitted travel.** Only travel for Essential Activities as defined herein is permitted. People riding on public transit must comply with Social Distancing Requirements to the greatest extent feasible. This Executive Order allows travel into, within, or out of the State to maintain COVID-19 Essential Businesses and Operations and Minimum Basic Operations.

3. **Leaving the home and travel for Essential Activities is permitted.** For purposes of this Executive Order, individuals may leave their residence only to perform any of the following Essential Activities:

   i. **For health and safety.** To engage in activities or perform tasks essential to their health and safety, or to the health and safety of their family or household members or persons who are unable to or should not leave their home (including, but not limited to, pets), such as, by way of example only and without limitation, seeking emergency services, obtaining medical supplies or medication, or visiting a health care professional or veterinarian.

   ii. **For necessary supplies and services.** To obtain necessary services or supplies for themselves and their family or household members or persons who are unable to or should not leave their home, or to deliver those services or supplies to others, such as, by way of example only and without limitation, groceries and food, household consumer products, supplies they need to work from home, automobile supplies (including sales, parts, supplies, repair and maintenance), and products necessary to maintain the safety, sanitation, and essential operation of residences or places of employment.

   iii. **For outdoor activity.** To engage in outdoor activity, provided individuals comply with Social Distancing Requirements and Mass Gatherings, as defined below, such as, by way of example and without limitation, walking, hiking, running, golfing, or biking. Individuals may go to public parks and open outdoor recreation areas. However, public playground equipment may increase spread of COVID-19, and therefore shall be closed. These activities are subject to the limitations on events or convenings in Section 3 of this Executive Order.
iv. **For certain types of work.** To perform work at businesses authorized to remain open under Section 2 of this Executive Order (which, as defined below, includes Healthcare and Public Health Operations, Human Services Operations, Essential Governmental Operations, and Essential Infrastructure Operations) or to otherwise carry out activities specifically permitted in this Executive Order, including Minimum Basic Operations.

v. **To take care of others.** To care for or assist a family member, friend, or pet in another household, and to transport family members, friends, or pets as allowed by this Executive Order. This includes attending weddings and funerals provided individuals comply with Social Distancing Requirements and Mass Gatherings as set forth below.

vi. **Place of worship.** Travel to and from a place of worship.

vii. **To receive goods and services.** To receive goods and services provided by a COVID-19 Essential Business or Operation.

viii. **Place of residence.** To return to or travel between one’s place or places of residence for purposes including, but not limited to, child custody or visitation arrangements.

ix. **Volunteering.** To volunteer with organizations that provide charitable and social services.

**Section 2. COVID-19 Essential Businesses and Operations**

In order to slow the spread of COVID-19, it is necessary to reduce the instances where individuals interact with one another in a manner inconsistent with the Social Distancing Requirements set forth below. Many of those interactions occur at work. At the same time, it is necessary that certain businesses, essential to the response to COVID-19, to the infrastructure of the State and nation, and to the day-to-day life of North Carolinians, remain open.

A. In light of the above considerations, non-essential business and operations must cease. All businesses and operations in the State, except COVID-19 Essential Businesses and Operations as defined below, are required to cease all activities within the State except Minimum Basic Operations, as defined below. For clarity, businesses, including home-based businesses, may also continue operations consisting exclusively of employees or contractors performing activities at their own residences (i.e., working from home).

B. All COVID-19 Essential Businesses and Operations are directed, to the maximum extent possible, to direct employees to work from home or telework.

C. For purposes of this Executive Order, a COVID-19 Essential Business and Operation includes the following businesses, not-for-profit organizations and educational institutions.

1. **Businesses that meet Social Distancing Requirements.** Businesses, not-for-profit organizations or educational institutions that conduct operations while maintaining Social Distancing Requirements:
   a. Between and among its employees; and
   b. Between and among employees and customers except at the point of sale or purchase.

3. **Healthcare and Public Health Operations.** Healthcare and Public Health Operations includes, but is not limited to: hospitals; clinics; dental offices; pharmacies; laboratories and laboratory service providers; public health entities, including those that compile, model, analyze and communicate public health information; pharmaceutical, pharmacy, medical device and equipment, and biotechnology and agricultural biotechnology companies (including operations, research and development, manufacture, and supply chain); organizations collecting blood, platelets, plasma, and other necessary materials; obstetricians and gynecologists; eye care centers, including those that sell glasses and contact lenses; dietary supplement retailers; naturopathic healthcare providers; home healthcare services providers; local management entities/managed care organizations (LME/MCO); mental health and substance use providers; other healthcare facilities and suppliers and providers of any related and/or ancillary healthcare services; and entities that transport and dispose of medical materials and remains.

Specifically included in Healthcare and Public Health Operations are manufacturers, technicians, logistics, and warehouse operators and distributors of medical equipment, personal protective equipment (PPE), medical gases, pharmaceuticals, blood and blood products, vaccines, testing materials, laboratory supplies, cleaning, sanitizing, disinfecting or sterilization supplies, and tissue and paper towel products.

Healthcare and Public Health Operations also includes veterinary care and all healthcare services provided to animals.

Healthcare and Public Health Operations shall be construed broadly to avoid any impacts to the delivery of healthcare, or public health operations broadly defined. Healthcare and Public Health Operations does not include those businesses ordered to close by Executive Order No. 120.

4. **Human Services Operations.** Human Services Operations includes, but is not limited to: long-term care facilities; child care centers, family child care homes; residential settings and shelters for adults, seniors, children, and/or people with developmental disabilities, intellectual disabilities, substance use disorders, and/or mental illness; transitional facilities; home-based settings to provide services to individuals with physical, intellectual, and/or developmental disabilities, seniors, adults, and children; field offices that provide and help to determine eligibility for basic needs, including food, cash assistance, medical coverage, child care, child support services, vocational services, rehabilitation services; developmental centers; adoption agencies; businesses that provide food, shelter, social services, transportation and other necessities of life for economically disadvantaged individuals, individuals with physical, intellectual, and/or developmental disabilities, or otherwise needy individuals.

Human Services Operations shall be construed broadly to avoid any impacts to the delivery of human services, broadly defined.

5. **Essential Infrastructure Operations.** Essential Infrastructure Operations includes, but is not limited to: food and beverage production, distribution, fulfillment centers, storage facilities; construction (including, but not limited to, construction required in response to this public health emergency, hospital construction, construction of long term care facilities, public works construction, school construction, and essential commercial and housing construction); building and grounds management and maintenance including landscaping; airport operations; operation and maintenance of utilities, including water, sewer, and gas; electrical (including power generation, distribution, and production of raw materials); distribution centers; oil and biofuel refining; roads, highways, railroads, and public transportation; ports; cybersecurity operations; flood control; solid waste and recycling collection and removal; and internet, video and telecommunications systems (including the provision of essential global, national and local infrastructure for computing services, business infrastructure, communications, and web-based services).
Essential Infrastructure Operations shall be construed broadly to avoid any impacts to essential infrastructure, broadly defined.

6. Essential Governmental Operations. Essential Governmental Operations means all services provided by the State or any municipality, township, county, political subdivision, board, commission or agency of government and needed to ensure the continuing operation of the government agencies or to provide for or support the health, safety and welfare of the public, and including contractors performing Essential Governmental Operations. Each government body shall determine its Essential Governmental Operations and identify employees and/or contractors necessary to the performance of those functions.

For purposes of this Executive Order, all first responders, emergency management personnel, emergency dispatchers, legislators, judges, court personnel, jurors and grand jurors, law enforcement and corrections personnel, hazardous materials responders, child protection and child welfare personnel, housing and shelter personnel, military, and other governmental employees working for or to support COVID-19 Essential Businesses and Operations are categorically exempt from this Executive Order.

This Executive Order does not apply to the United States government. Nothing in this Executive Order shall prohibit any individual from performing or accessing Essential Governmental Operations. Nothing in this Executive Order rescinds, amends, or otherwise modifies Section 2 of Executive Order No. 120.

7. Stores that sell groceries and medicine. Grocery stores, pharmacies, certified farmers’ markets, farm and produce stands, supermarkets, convenience stores, and other establishments engaged in the retail sale of groceries, canned food, dry goods, frozen foods, fresh fruits and vegetables, pet supplies, fresh meats, fish, and poultry, prepared food, alcoholic and nonalcoholic beverages, any other household consumer products (such as cleaning and personal care products), and specifically includes their supply chain and administrative support operations. This includes stores that sell groceries, medicine, including medication not requiring a medical prescription, and also that sell other non-grocery products, and products necessary to maintaining the safety, sanitation, and essential operation of residences and COVID-19 Essential Businesses and Operations.

8. Food, beverage production and agriculture. Food and beverage manufacturing, production, processing, and cultivation, including farming, livestock, fishing, forestry, baking, and other production agriculture, including cultivation, marketing, production, and distribution of animals and goods for consumption; and businesses that provide food, shelter, services and other necessities of life for animals, including animal shelters, rescues, shelters, kennels, and adoption facilities.

9. Organizations that provide charitable and social services. Businesses as well as religious and secular not-for-profit organizations, including food banks, when providing food, shelter, social services, and other necessities of life for economically disadvantaged or otherwise needy individuals, individuals who need assistance as a result of this emergency, and people with disabilities.

10. Religious entities. Religious facilities, entities, groups, gatherings, including funerals. Also, services, counseling, pastoral care, and other activities provided by religious organizations to the members of their faith community. All of these functions are subject to the limitations on events or convenings in Section 3 of this Executive Order.


12. Gas stations and businesses needed for transportation. Gas stations and auto supply, sales, tire, auto-repair, roadside assistance and towing services, farm equipment, construction equipment, boat repair, and related facilities and bicycle shops and related facilities.
13. **Financial and insurance institutions.** Bank, currency exchanges, consumer lenders, including but not limited to, pawnbrokers, consumer installment lenders and sales finance lenders, credit unions, appraisers, title companies, financial markets, trading and futures exchanges, affiliates of financial institutions, entities that issue bonds, related financial institutions, and institutions selling financial products. Also insurance companies, underwriters, agents, brokers, and related insurance claims and agency services.

14. **Home improvement, hardware and supply stores.** Home improvement, building supply, hardware stores, and businesses that sell building materials and supplies, electrical, plumbing, and heating materials.

15. **Critical trades.** Building and construction tradesmen and tradeswomen, and other trades, including but not limited to, plumbers, electricians, exterminators, cleaning and janitorial staff for commercial and governmental properties, security staff, operating engineers, HVAC, painting, cleaning services, moving and relocation services, landscaping and other service providers who provide services that are necessary to maintaining the safety, sanitation, and essential operation of residences and COVID-19 Essential Businesses and Operations. This includes organizations that represent employees.

16. **Mail, post, shipping, logistics, delivery, and pick-up services.** Post offices and other businesses that provide shipping and delivery services, and businesses that ship or deliver groceries, food, alcoholic and non-alcoholic beverages, goods, vehicles or services to end users or through commercial channels.

17. **Educational institutions.** Educational institutions including public and private pre-K-12 schools, colleges, and universities for purposes of facilitating remote learning, performing critical research, or performing essential functions, provided that the Social Distancing Requirements set forth below of this Executive Order are maintained to the greatest extent possible. This Executive Order is consistent with and does not amend or supersede prior Executive Orders regarding the closure of public schools.

18. **Laundry services.** Laundromats, dry cleaners, industrial laundry services, and laundry service providers.

19. **Restaurants for consumption off-premises.** Restaurants and other facilities that prepare and serve food, but only for consumption off-premises, through such means as in-house delivery, third-party delivery, drive-through, curbside pick-up, and carry-out. Schools and other entities that provide free food services to students or members of the public may continue to do so under this Executive Order when the food is provided for carry-out, drive-through or delivery. This Executive Order is consistent with and does not amend or supersede prior COVID-19 related Executive Orders restricting the operations of restaurants and temporarily closing bars.

20. **Supplies to work from home.** Businesses that sell, manufacture, or supply office supply products or other products needed for people to work from home.

21. **Supplies for COVID-19 Essential Businesses and Operations.** Businesses that sell, manufacture, support, or supply other COVID-19 Essential Businesses and Operations with the service or materials necessary to operate, including computers, audio and video electronics, household appliances; payroll processing and related services; IT and telecommunication equipment; elections personnel and election-related equipment supplies; hardware, paint, flat glass, electrical, plumbing and heating material; sanitary equipment; personal hygiene products; food, food additives, ingredients and components; medical and orthopedic equipment; optics and photography equipment; and diagnostics, food and beverages, chemicals, soaps and detergent.

22. **Transportation.** Airlines, taxis, automobile dealers, transportation network providers (such as Uber and Lyft), vehicle rental services, paratransit, trains, marinas, docks, boat storage, and other private, public, and commercial transportation and logistics providers, and public transportation necessary to access COVID-19 Essential Businesses and Operations.
23. **Home-based care and services.** Home-based care for adults, seniors, children, and/or people with developmental disabilities, intellectual disabilities, substance use disorders, and/or mental illness, including caregivers such as nannies who may travel to the child’s home to provide care, and other in-home services including meal delivery.

24. **Residential facilities and shelters.** Residential facilities and shelters for adults, seniors, children, pets, and/or people with developmental disabilities, intellectual disabilities, victims of domestic violence, people experiencing homelessness, substance use disorders, and/or mental illness.

25. **Professional services.** Professional services, such as legal services, accounting services, insurance services, professional engineering and architectural services, land surveying services, real estate services (including brokerage, appraisal and title services) and tax preparation services.

26. **Manufacture, distribution, and supply chain for critical products and industries.** Manufacturing companies, distributors, and supply chain companies producing and supplying essential products and services in and for industries such as pharmaceutical, technology, biotechnology, healthcare, chemicals and sanitization, waste pickup and disposal, agriculture, food and beverage, transportation, energy, steel and steel products, petroleum and fuel, mining, construction, communications, as well as products used or commonly sold by other COVID-19 Essential Businesses and Operations.

27. **Defense and military contractors.** Defense and military contractors that develop products, processes, equipment, technology, and related services that serve the United States military, national defense, and national security interests.

28. **Hotels and motels.** Hotels and motels, to the extent used for lodging and delivery or carry-out food services.

29. **Funeral Services.** Funeral, mortuary, cremation, burial, cemetery, and related services. These services are subject to the limitations on events or convenings in Section 3 of this Executive Order.

30. **Additional COVID-19 Essential Retail Businesses.** Additional COVID-19 Essential Retail Businesses are:

   - Electronic retailers that sell or service cell phones, computers, tablets, and other communications technology;
   - Lawn and garden equipment retailers;
   - Book stores that sell educational material;
   - Beer, wine, and liquor stores;
   - Retail functions of gas stations and convenience stores;
   - Retail located within healthcare facilities;
   - Pet and feed stores.

D. All COVID-19 Essential Businesses and Operations shall, to the extent practicable, maintain the Social Distancing Requirements set forth in this Executive Order.

E. “Social Distancing Requirements” as used in this Executive Order means:

a. maintaining at least six (6) feet distancing from other individuals;

b. washing hands using soap and water for at least twenty (20) seconds as frequently as possible or the use of hand sanitizer;

c. regularly cleaning high-touch surfaces;

d. facilitating online or remote access by customers if possible.
F. Businesses excluded from the list of COVID-19 Essential Businesses and Operations set forth in this Executive Order who believe that they may be essential may direct requests to be included to the North Carolina Department of Revenue (the “Department”). The Department may grant such request if it determines that it is in the best interest of the State to have the business continue operations in order to properly respond to this COVID-19 pandemic. The Department shall post on its website a point of contact and procedure for businesses seeking to be designated as essential. A business that has made a request to the Department to be included as a COVID-19 Essential Business or Operation may continue to operate until that request is acted upon.

G. Businesses that are not COVID-19 Essential Businesses and Operations are required to cease all activities within the State except Minimum Basic Operations, as defined below. Businesses that are not COVID-19 Essential Businesses and Operations should comply with Social Distancing Requirements, to the maximum extent possible, when carrying out their Minimum Basic Operations.

As used in this Executive Order, “Minimum Basic Operations” include the following:

i) The minimum necessary activities to maintain the value of the business’s inventory, preserve the condition of the business’s physical plant and equipment, ensure security, process payroll and employee benefits, or related functions.

ii) The minimum necessary activities to facilitate employees of the business being able to continue to work remotely from their residences.

H. Notwithstanding any other provision of this Executive Order, the businesses, not-for-profit organizations and educational institutions that were ordered closed by Executive Order Nos. 118 and 120 shall remain closed.

Section 3. Mass Gatherings

For the reasons and pursuant to the authority set forth above:

A. Section 1(a) of Executive Order Nos. 117 and 120 is rescinded and replaced as follows:

1. A mass gathering is defined as any event or convening that brings together more than ten (10) persons in a single room or single space at the same time, such as an auditorium, stadium, arena, large conference room, meeting hall, or any other confined indoor or outdoor space. This includes parades, fairs and festivals.

2. A mass gathering does not include normal operations at airports, bus and train stations, medical facilities, libraries, shopping malls and centers. It also does not include any COVID-19 Essential Business or Operation as defined in this Executive Order.

3. Notwithstanding the above, and in an effort to promote human dignity and limit suffering, funerals are permitted to include no more than fifty (50) persons, while observing Social Distancing Requirements to the extent practicable.

4. Pursuant to N.C. Gen. Stat. §§ 166A-19.30(a)(2), -19.30(c) the provisions of this section shall be enforced by state and local law enforcement officers.

The remainder of Executive Order Nos. 117 and 120 continue to be in effect.

Section 4. Local Orders

A. The undersigned recognizes that the impact of COVID-19 has been and will likely continue to be different in different parts of North Carolina. Urban areas have seen more rapid and significant spread than most rural areas of the state. As such, the undersigned acknowledges that counties and cities may deem it necessary to adopt ordinances and issue state of emergency declarations which impose restrictions or prohibitions to the extent authorized under North Carolina law, such as on the activity of people and businesses, to a greater degree than in this
Executive Order. To that end, nothing herein is intended to limit or prohibit counties and cities in North Carolina from enacting ordinances and issuing state of emergency declarations which impose greater restrictions or prohibitions to the extent authorized under North Carolina law.

B. Notwithstanding the language in paragraph (A) of this Section, no county or city ordinance or declaration shall have the effect of restricting or prohibiting COVID-19 Essential Governmental Operations of the State as determined by the State.

C. Nothing in this Executive Order rescinds, amends, or otherwise modifies Section 2 of Executive Order No. 120.

Section 5. Savings Clause
If any provision of this Executive Order or its application to any person or circumstances is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision or application of this Executive Order, which can be given effect without the invalid provision or application. To achieve this purpose, the provisions of this Executive Order are declared to be severable.

Section 6. Enforcement
A. Pursuant to N.C. Gen. Stat. § 166A-19.30(a)(2), the provisions of this Executive Order shall be enforced by state and local law enforcement officers.

B. A violation of this Executive Order may be subject to prosecution pursuant to N.C. Gen. Stat. § 166A-19.30(d), and is punishable as a Class 2 misdemeanor in accordance with N.C. Gen. Stat. § 14-288.20A.

C. Nothing in this Executive Order shall be construed to preempt or overrule a court order regarding an individual's conduct (e.g., a Domestic Violence Protection Order or similar orders limiting an individual's access to a particular place).

Section 7. Effective Date
This Executive Order is effective Monday, March 30, 2020, at 5:00pm, and shall remain in effect for thirty (30) days from that date or unless repealed, replaced, or rescinded by another applicable Executive Order. An Executive Order rescinding the Declaration of the State of Emergency will automatically rescind this Executive Order.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 27th day of March in the year of our Lord two thousand and twenty.

Roy Cooper
Governor

ATTEST:

Rodney S. Maddox
Chief Deputy Secretary of State
EMAIL TO:  All Sheriffs

FROM:  Eddie Caldwell
       Executive Vice President and General Counsel
       North Carolina Sheriffs’ Association

SENT:  March 27, 2020

SUBJECT:  Does a Sheriff Have the Authority to Suspend Processing and Issuance of Pistol Purchase Permits and Concealed Handgun Permits Because of a Declared State of Emergency?

Questions have arisen about whether or not current State law allows a sheriff to cease processing and issuing pistol purchase permits, concealed handgun permits, or both because of a declared state of emergency, such as the coronavirus pandemic.

For the reasons stated below, we can find no legal authority authorizing a sheriff to stop processing and issuing the following permits because of a declared state of emergency, because the processing and issuance of these permits are mandated by statute:

(1) Pistol purchase permits.
(2) New concealed handgun permits.
(3) Renewal concealed handgun permits.

Note: In various statutes cited below, emphasis (bold/underline) has been added as appropriate to assist the reader.

A. Pistol Purchase Permits

Article 52A of Chapter 14 of our General Statutes governs the pistol purchase permitting process. North Carolina sheriffs are required to issue these permits to qualified applicants within their respective jurisdictions. Article 52A does not grant to the sheriff the authority to suspend processing or issuing pistol purchase permits because of a declared state of emergency.

G.S. § 14-403 provides: “The sheriffs of any and all counties of this State shall issue to any person, firm, or corporation in any county a permit to purchase or receive any weapon mentioned in this Article [i.e. pistol] from any person, firm, or corporation offering to sell or dispose of the weapon.”
G.S. § 14-404 further provides: “Upon application, and such application must be provided by the sheriff electronically, the sheriff shall issue the permit to a resident of that county” when the sheriff has completed the criminal background check and has made a determination that the applicant does not have a disqualifying criminal conviction, is of good moral character and is obtaining the permit for protection, target shooting, collection or hunting.

As part of the mandatory criminal background check, G.S. § 14-404(a)(1) requires that the “sheriff shall determine the criminal and background history of any applicant by accessing computerized criminal history records as maintained by the State Bureau of Investigation and the Federal Bureau of Investigation, by conducting a national criminal history records check, by conducting a check through the National Instant Criminal Background Check System (NICS), and by conducting a criminal history check through the Administrative Office of the Courts.”

Pursuant to G.S. § 14-404(e): “There shall be no limit as to the number or frequency of permit applications.” G.S. § 14-404(f) also requires that: “Each applicant for a license or permit shall be informed by the sheriff within 14 days of the date of the application whether the license or permit will be granted or denied and, if granted, the license or permit shall be immediately issued to the applicant.”

There is nothing in Article 52A that gives the sheriff the discretion to stop processing applications for pistol purchase permits or to otherwise delay issuance of the permit to a qualified applicant beyond the statutorily mandated 14-day deadline that is in G.S. § 14-404(f). Furthermore, we can find no legal authority elsewhere in the General Statutes or in case law that authorizes the sheriff to not follow the mandatory provisions in Article 52A because of a declared state of emergency.

B. Concealed Handgun Permits
Article 54B of Chapter 14 governs the concealed handgun permitting process. G.S. § 14-415.14(a) provides: “The sheriff shall make permit applications readily available at the office of the sheriff or at other public offices in the sheriff's jurisdiction.” In addition, G.S. § 14-415.12(a) provides: “The sheriff shall issue a permit to an applicant if the applicant qualifies....”

G.S. § 14-415.15(a) states the sheriff “shall either issue or deny the permit” within “45 days after receipt” of both the items required of the applicant (such as the fee, application, safety course certificate, signed release and fingerprints) and the mental health records of the applicant. As part of the permitting process, G.S. § 14-415.13 requires the applicant to submit a full set of fingerprints to the sheriff and the fingerprinting must be “administered by the sheriff.”

Article 54B does not grant to the sheriff the authority to suspend the processing or issuance of concealed handgun permits because of a declared state of emergency. There is nothing in Article 54B that gives the sheriff the discretion to stop processing or issuing concealed handgun permits. We can find no legal authority elsewhere in the General Statutes or in case law that authorizes the sheriff to not follow the mandatory provisions in Article 54B because of a declared state of emergency.

C. Concealed Handgun Permit Renewals
Concealed handgun permit renewals are governed by G.S. § 14-415.16. All that is required for a renewal is: (1) submission of a renewal form; (2) submission of an affidavit stating the applicant remains qualified; and (3) payment of fees.
Additionally, G.S. § 14-415.16(d) provides that no fingerprints are required for a concealed handgun permit renewal application if the applicant’s fingerprints have previously been placed into the Automated Fingerprint Identification System (AFIS).

We believe the analysis for concealed handgun permit renewals is the same as described above in Section B for new concealed handgun permits.

We can find no legal authority elsewhere in the General Statutes or in case law that authorizes the sheriff to not follow the mandatory provisions regarding the renewal of a concealed handgun permit because of a declared state of emergency.

D. Governor Cooper’s Executive Orders and County State of Emergency

It has been suggested that various local emergency orders and Governor Cooper’s Executive Orders No. 117 and No. 120 may authorize the sheriff to stop processing and issuing pistol purchase permits, concealed handgun permits, or both. Specifically, some of these local emergency orders and the Governor’s Executive Orders recommend that local government officials “take appropriate precautions to maintain the health of the general public and their employees who are required to perform their official duties in a manner that brings them in contact with the general public by putting in place appropriate public health measures, such as social distancing, use of reasonable personal protective equipment, and offering reasonable accommodations to employees who provide services to the public with consideration for their health.”

Of critical importance, there is no State law that allows a local emergency order to supersede the statutory requirements contained in Chapter 14 of our General Statutes.

Furthermore, while the powers of the Governor, including issuance of Executive Orders, during a declared state of emergency are broad, they do not include the authority to supersede the statutory requirements contained in Chapter 14 of our General Statutes. This is best summarized by Norma Houston, Lecturer in Public Law and Government, at the UNC-CH School of Government, who has advised:

The Governor’s emergency powers under Chapter 166A, while broad, do not include the blanket authority to override a state statute. The Governor, with concurrence of the Council of State, is authorized to waive “a provision of any regulation or ordinance.” (G.S. § 166A-19.30(b)(4)). A statute is not a “regulation” or “ordinance.” Thus, by Executive Order, the Governor cannot suspend or waive a provision of statute unless such authority is specifically granted as to a specific statute (there is one specific grant of such authority under G.S. § 166A-19.30(a)(5) regarding Articles 1, 4, and 7 of Chapter 113A of the General Statutes for certain enumerated purposes), or the statute in question itself grants authority for flexibility for modification without legislative action. **No such authority is granted for any provisions of Chapter 14.** (Emphasis added.)

While local emergency orders and the Governor’s Executive Orders encourage social distancing and other protective health measures, they do not and cannot legally direct law enforcement officials to cease providing services that are required by our General Statutes. In fact, Section 2 of Executive Order 120 itself directs local governments to continue to perform functions required by State and federal law:
Section 2. Mandatory Local Government Operations

a. Consistent with my authority under N.C. Gen. Stat. §§ 166A-19.30(c)(1) and (c)(2), and to the extent that local government functions are required under state and federal law, I hereby direct the appropriate local government agencies and officials to continue to exercise their responsibilities, including but not limited to local county Department of Social Services ("DSS") offices, Health Departments, Registers of Deeds, and other local government functions that are required to protect lives and property.

b. Notwithstanding Section (a) of this Section, local government must take appropriate precautions to maintain the health of the general public and their employees who are required to perform their official duties in a manner that brings them in contact with the general public by putting in place appropriate public health measures, such as social distancing, use of reasonable personal protective equipment, and offering reasonable accommodations to employees who provide services to the public with consideration for their health. (Emphasis added.)

Note: Some counties have enacted [and the Governor may eventually enact] a “stay at home” provision in their emergency order that prohibits persons from movement or travel about public places including streets, roadways, etc. and that requires persons to remain in their household or residential living unit, except for purposes of certain specified “essential activities,” such as grocery or pharmacy shopping, medical appointments, etc. These provisions may restrict persons from coming to the sheriff’s office to apply for either a pistol purchase permit, a concealed handgun permit, or both, unless that is ultimately determined to be an “essential activity.” Of course, for pistol purchase permits and renewal of concealed handgun permits, the application paperwork can be submitted to the sheriff’s office via U.S. Mail, and the permit can be returned to the applicant via U.S. Mail. For sheriff’s offices with the capability, those applications could also be submitted electronically on-line.

It has also been suggested that the sheriff can stop processing pistol purchase permits, concealed handgun permits, or both, because the sheriff utilizes the clerk of court to conduct the necessary criminal history searches of applicants and the clerk of court cannot or will not perform this service. G.S. § 14-404(f) requires a sheriff to either issue or deny the pistol purchase permit “within 14 days of the date of application” and there are no exceptions in the law to this deadline. Regarding concealed handgun permits, G.S. § 14-415.15(a) states the sheriff “shall either issue or deny the permit” within “45 days after receipt” of the required items and there are no exceptions in the law to this deadline. The sheriff could choose to conduct the criminal history searches independently through alternate electronic databases such as the Criminal Justice Law Enforcement Automated Data Services (CJLEADS) instead of through a clerk of court.

Furthermore, it has been suggested that the sheriff has the authority to simply postpone accepting applications for pistol purchase permits, concealed handgun permits, or both, presumably to avoid processing and issuing the permits during a declared state of emergency. There is no State law that allows the sheriff to refuse to accept applications for pistol purchase and concealed handgun permits or to otherwise delay receipt of applications in order to artificially extend the statutorily mandated 14 day deadline.
Again, G.S. § 14-404(e) states: “There shall be no limit as to the number or frequency of permit applications . . .” and G.S. § 14-404(f) requires that: “Each applicant for a license or permit shall be informed by the sheriff within 14 days of the date of the application whether the license or permit will be granted or denied and, if granted, the license or permit shall be immediately issued to the applicant.” Additionally, with respect to concealed handgun permit applications, G.S. § 14-415.13 states: “A person shall apply to the sheriff of the county in which the person resides to obtain a concealed handgun permit.” G.S. § 14-415.14 further states: “The sheriff shall make permit applications readily available at the office of the sheriff or at other public offices in the sheriff’s jurisdiction.”

We can find no legal authority elsewhere in the General Statutes or in case law that authorizes the sheriff to not follow the mandatory provisions regarding processing and issuance of pistol purchase permits, concealed handgun permits, or both, merely by refusing to accept applications because of a declared state of emergency.

Finally, some have suggested that the sheriff has the authority to prohibit persons from entering the sheriff's office to be fingerprinted so long as it is pursuant to a continuity of operations plan that is in place to deal with the COVID-19 pandemic. There is no State law that allows the sheriff to stop processing and issuing concealed handgun permits based upon an internal continuity of operations plan or any other policy or plan adopted by the sheriff. Furthermore, the General Statutes contemplate that these gun permit processing activities can occur at a sheriff's office or at any other location. G.S. § 14-415.14(a) authorizes the sheriff to “make permit applications readily available at the office of the sheriff or at other public offices in the sheriff’s jurisdiction.”

E. Constitutional Considerations
If a sheriff ceases to process pistol purchase permits, concealed handgun permits, or both during a declared state of emergency, it is possible that a deprivation of rights claim under Title 42, Section 1983 of the United States Code could be brought for infringement of an individual’s constitutional right to possess firearms. Sheriffs should be aware that prior to 2012, during a declared state of emergency, several General Statutes allowed restrictions and prohibitions to be imposed on the “possession, transportation, sale, purchase, storage and use of dangerous weapons and substances, and gasoline.” “Dangerous weapons,” under these former statutes, included firearms such as handguns, rifles, and shotguns.

Those General Statutes, as they applied to firearms, were held unconstitutional in the federal court case in the Eastern District of North Carolina of Bateman v. Perdue, 881 F.Supp.2d 709 (2012). As a result, the North Carolina General Assembly amended those General Statutes effective October 1, 2012 (recodified as G.S. § 166A-19.31) to address this issue.

G.S. § 166A-19.31(b)(4) provides that ordinances enacted by counties or cities during a state of emergency may include prohibitions and restrictions: “Upon the possession, transportation, sale, purchase, storage, and use of gasoline, and dangerous weapons and substances, except that this subdivision does not authorize prohibitions or restrictions on lawfully possessed firearms or ammunition.” (emphasis added.)

By discontinuing the processing and issuing of pistol purchase permits, concealed handgun permits, or both, even during a declared state of emergency, a sheriff could be exposed to civil liability for infringing on constitutionally protected rights.
F. Statutes Governing Removal from Office, etc. and the Sheriff's Bond

G.S. § 128-16 provides that the sheriff “shall be removed from office by the judge of the superior court, resident in or holding the courts of the district where said officer is resident upon charges made in writing, and hearing thereunder, for the following causes:

(1) For willful or habitual neglect or refusal to perform the duties of his office.
(2) For willful misconduct or maladministration in office.”

An action to remove the sheriff “may be filed upon the relation of any five qualified electors of the county in which the person charged is an officer, upon the approval of the county attorney of such county, or the district attorney of the district, or by any such officer upon his own motion. It shall be the duty of the county attorney or district attorney to appear and prosecute this proceeding.” G.S. § 128-17. While we could find no court cases on this point related to a sheriff, the actions of the sheriff could be viewed as failing to perform a duty mandated by our General Statutes.

G.S. § 14-230(a) provides that “[i]f any clerk of any court of record, sheriff, magistrate, school board member, county commissioner, county surveyor, coroner, treasurer, or official of any of the State institutions, or of any county, city or town, shall willfully omit, neglect or refuse to discharge any of the duties of his office, for default whereof it is not elsewhere provided that he shall be indicted, he shall be guilty of a Class 1 misdemeanor. If it shall be proved that such officer, after his qualification, willfully and corruptly omitted, neglected or refused to discharge any of the duties of his office, or willfully and corruptly violated his oath of office according to the true intent and meaning thereof, such officer shall be guilty of misbehavior in office, and shall be punished by removal therefrom under the sentence of the court as a part of the punishment for the offense.” A successful prosecution under this statute must show injury to the public. See State v. Anderson, 196 N.C. 771 (1929). While we could find no court cases on this point related to a sheriff, the actions of the sheriff could be viewed as failing to perform a duty mandated by our General Statutes.

Finally, G.S. § 162-8 provides that a sheriff must furnish a bond. A claim could be filed against the sheriff’s bond for the sheriff’s failure to make “the due execution and return of process, the payment of fees and moneys collected, and the faithful execution of his office as sheriff.”

Therefore, we recommend sheriffs consult with their own legal counsel or county attorney prior to making the decision to stop processing and issuing pistol purchase permits, concealed handgun permits, or both.

G. Fingerprinting for Other Purposes

Sheriffs have asked about other circumstances in which they are required to administer fingerprints. Fingerprinting in certain specified situations is mandatory and may not be suspended, even during a declared state of emergency. In addition to the mandatory fingerprinting for concealed handgun permit applications, we have identified the following mandatory fingerprinting:

(1) Pursuant to G.S. § 15A-502, it “shall be the duty of the arresting law enforcement agency” to fingerprint individuals who have been charged with: (a) a felony, (b) domestic criminal trespass or other criminal offense involving domestic violence, (c) impaired driving misdemeanor offenses, or (d) possession of a controlled substance.
(2) Pursuant to G.S. § 15A-502, it “shall be the duty of the arresting law enforcement agency” to fingerprint individuals who have been charged with the misdemeanor offense of assault, stalking, or communicating a threat if the person is under a domestic hold pursuant to G.S. § 15A-534.1.

(3) In addition, pursuant to G.S. § 7B-2102, a law enforcement officer or agency “shall fingerprint” juveniles who have committed more serious offenses that do not qualify for diversion in juvenile court. This applies to juveniles 10 years of age or older who commit non-divertible offenses, who are in the physical custody of law enforcement or the Division of Adult Correction and Juvenile Justice, and where a complaint has been prepared for filing against the juvenile. [Note: This statute does not specify which law enforcement officer or agency must do the fingerprinting, but it appears to intend for the fingerprinting to be done by the officer or agency that takes the juvenile into custody.]

(4) The sheriff shall fingerprint persons who are placed on the North Carolina Sex Offender Registry. Pursuant to G.S. § 14-208.7(b)(4), the sheriff is required to take the fingerprints of a sex offender “at the time of registration.” This requirement is mandatory.

There are no exceptions in the law to the fingerprinting requirements in paragraphs (1) through (4) above, and we can find no legal authority elsewhere in the General Statutes or in case law that authorizes the sheriff to not follow these mandatory fingerprinting requirements.

There are no other circumstances we are aware of at this time that require the sheriff to administer fingerprints. There are various discretionary scenarios where a sheriff may or may not choose to administer fingerprints. An example of this are the fingerprinting services offered by some sheriffs to the general public for occupational licensing or for employment purposes. These statutes do not require a sheriff’s office to conduct the fingerprinting service. For example, under G.S. § 58-33-48, applicants for an insurance producer’s license must provide fingerprints that are certified by an authorized law enforcement officer. Other examples include applications for licenses to practice in healthcare (e.g., G.S. § 143B-949); applications for an ABC permit (G.S. § 18B-902); and applications for public adjuster insurance licenses (G.S. § 58-33A-15).

Notably, none of these statutes mandate that any one specific law enforcement agency, such as a sheriff’s office, provide the fingerprinting service. Therefore, a sheriff may decide to offer or suspend fingerprinting services for the general public in these discretionary scenarios.

If you have any questions regarding these issues, do not hesitate to contact Matthew Boyatt, NCSA Deputy General Counsel, at mboyatt@ncsheriffs.net or at 919-459-6467.

Thanks….Eddie C.
EMAIL TO: All Sheriffs
FROM: Eddie Caldwell
Executive Vice President and General Counsel
North Carolina Sheriffs’ Association
SENT: March 20, 2020
SUBJECT: Suspending Fingerprinting Services for the General Public During a Declared State of Emergency

With the rapidly evolving COVID-19 pandemic, law enforcement officials must decide which services they can continue to provide safely to the general public and which services should be limited or suspended during the pandemic. To this point, many law enforcement officials have asked whether or not a sheriff can be required to continue providing fingerprinting services for the general public during the coronavirus pandemic.

The short answer is no, there is no legal obligation upon the Office of Sheriff to have sheriff’s office personnel continue to provide fingerprinting services for the general public. It is within the discretion of the sheriff to suspend this type of service during a state of emergency.

While there are many statutes that require fingerprinting for occupational licensing, employment, and for other purposes, these statutes do not require a sheriff’s office to conduct the fingerprinting service. For example, under G.S. 58-33-48, applicants for an insurance producer’s license must provide fingerprints that are certified by an authorized law enforcement officer. Other examples include applications for licenses to practice in healthcare (e.g., G.S. 143B-949); applications for an ABC permit (G.S. 18B-902); and applications for public adjuster licenses (G.S. 58-33A-15).

Notably, none of these statutes mandate that any one specific law enforcement agency, such as a sheriff’s office, provide the fingerprinting service. Therefore, a sheriff may use discretion regarding the decision to offer or suspend fingerprinting services for the general public.

The processing of Concealed Handgun Permits (CHP) under our General Statutes is treated differently in terms of who conducts fingerprinting. Pursuant to G.S.14-415.13, a CHP applicant must submit a full set of fingerprints to the sheriff and the
fingerprinting must be “administered by a sheriff.” G.S. 14-415.15 requires a sheriff to either issue or deny the CHP permit within 45 days of receiving both the mental health records of the applicant and all other information required from the applicant under G.S. 14-415.13 (such as the fee, application, safety course certificate and signed release). The statute does not appear to prohibit a sheriff from suspending CHP fingerprinting services during a declared state of emergency. Furthermore, G.S. 14-415.20 states that a sheriff “shall not incur any civil or criminal liability as the result of the performance of the sheriff's duties under this Article.” Based on this statutory language, any sheriff suspending CHP fingerprinting services during a declared state of emergency would be protected from any civil or criminal liability related to the temporary suspension of this service due to public safety concerns, such as the coronavirus pandemic.

Finally, please remember that fingerprinting for certain arrests are mandatory and may not be suspended, even during a state of emergency. This is because our General Statutes mandate fingerprinting, as explained below.

Pursuant to G.S. 15A-502, it “shall be the duty of the arresting law enforcement agency” to fingerprint individuals who have been charged with: a felony, domestic criminal trespass or other criminal offense involving domestic violence, impaired driving misdemeanor offenses, or possession of a controlled substance. Fingerprinting is also required for the misdemeanor offense of assault, stalking, or communicating a threat if the person is under a domestic hold pursuant to G.S. 15A-534.1. There are no exceptions in the law to the fingerprinting requirement for these criminal offenses. In addition, pursuant to G.S. 7B-2102, a law enforcement officer or agency “shall fingerprint” juveniles who have committed more serious offenses that do not qualify for diversion in juvenile court. This applies to juveniles 10 years of age or older who commit non-divertible offenses, who are in the physical custody of law enforcement or the Division of Adult Correction and Juvenile Justice, and where a complaint has been prepared for filing against the juvenile.

If you have any questions regarding a sheriff’s discretion to suspend fingerprinting services for the general public during a declared state of emergency, do not hesitate to contact Matthew Boyatt, NCSA Deputy General Counsel, at mboyatt@ncsheriffs.net or at 919-459-6467.

Thanks….Eddie C.

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